



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

January 17, 2017

Mr. Jonathan Kaplan  
Assistant City Attorney  
Office of the City Attorney  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

OR2017-01063

Dear Mr. Kaplan:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 641897 (COSA File No. W143020-101916).

The City of San Antonio (the "city") received a request for information pertaining to a specific request for proposals. The city claims the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exceptions the city claims and reviewed the submitted information.

Section 552.101 of the Government Code excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. The city raises section 552.101 in conjunction with sections 418.176, 418.179, 418.181, and 418.182 of the Texas Homeland Security Act (the "HSA"), chapter 418 of the Government Code. Sections 418.176 through 418.182 were added to chapter 418 as part of the HSA. These provisions make certain information related to terrorism confidential. Section 418.176 provides in relevant part:

- (a) Information is confidential if the information is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing,

detecting, responding to, or investigating an act of terrorism or related criminal activity and:

(1) relates to staffing requirements of an emergency response provider, including law enforcement agency, a fire-fighting agency, or an emergency services agency; [or]

(2) relates to a tactical plan of the provider[.]

*Id.* § 418.176(a)(1), (a)(2). Section 418.179 provides in relevant part:

(a) Information is confidential if the information:

(1) is collected, assembled, or maintained by or for a governmental entity for the purpose of preventing, detecting, or investigating an act of terrorism or related criminal activity; and

(2) relates to the details of the encryption codes or security keys for a public communications system.

*Id.* § 418.179(a). Section 418.181 provides:

Those documents or portions of documents in the possession of a governmental entity are confidential if they identify the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism.

*Id.* § 418.181. Section 418.182 provides:

(a) Except as provided by Subsections (b) and (c), information, including access codes and passwords, in the possession of a governmental entity that relates to the specifications, operating procedures, or location of a security system used to protect public or private property from an act of terrorism or related criminal activity is confidential.

*Id.* § 418.182(a). The fact that information may be related to a governmental body's security concerns, emergency preparedness, or security system does not make such information *per se* confidential under the HSA. *See* Open Records Decision No. 649 at 3 (1996) (language of confidentiality provisions controls scope of its protection). Furthermore, the mere recitation by a governmental body of a statute's key terms is not sufficient to demonstrate the applicability of a claimed provision. As with any confidentiality statute, a governmental body asserting this section must adequately explain how the responsive information falls within the scope of the provision. *See* Gov't Code § 552.301(e)(1)(A) (governmental body must explain how claimed exception to disclosure applies).

The city asserts its radio system is a critical component of the city's infrastructure "in responding to not only routine emergencies, but also events of catastrophic proportions, including acts of terrorism." The city argues, "[s]hould the ability to 'hack' into the system develop, persons listening in on these broadcasts would know manpower numbers, where personnel are deployed, what targets are vulnerable as well as general and specific strategies being used to deal with emergency situations." The city further argues "having this information would allow a person to not just listen in on broadcasts, but would allow them to transmit over these frequencies, effectively 'jamming' them."

Based upon the city's representations and our review, we agree the radio system at issue constitutes critical infrastructure for the purposes of section 418.181 of the Government Code. *See id.* § 421.001 (defining "critical infrastructure" to include all public or private assets, systems, and functions vital to security, governance, public health and safety, economy, or morale of the state or the nation). Therefore, we find the information we have marked and indicated reveals the technical details of particular vulnerabilities of critical infrastructure to an act of terrorism. Thus, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code.<sup>1</sup> However, we find the city has failed to establish the remaining information is confidential under section 418.176, 418.179, 418.181, or 418.182 of the Government Code. Therefore, the city may not withhold any of the remaining information under section 552.101 of the Government Code in conjunction with sections 418.176, 418.179, 418.181, or 418.182 of the Government Code.

Section 552.108(a)(1) of the Government Code excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]" *See id.* § 552.108(a)(1). A governmental body claiming section 552.108(a)(1) must explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Upon review, we find the city has failed to demonstrate the remaining information pertains to an ongoing criminal investigation or prosecution, nor has the city explained how its release would interfere with the detection, investigation, or prosecution of crime. Thus, the city has failed to demonstrate the applicability of section 552.108(a)(1) of the Government Code to the remaining information, and the city may not withhold the remaining information on that basis.

In summary, the city must withhold the information we have marked and indicated under section 552.101 of the Government Code in conjunction with section 418.181 of the Government Code. The remaining information must be released.

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<sup>1</sup>As our ruling is dispositive, we need not address the city's remaining arguments against disclosure of this information.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Rahat Huq  
Assistant Attorney General  
Open Records Division

RSH/som

Ref: ID# 641897

Enc. Submitted documents

c: Requestor  
(w/o enclosures)